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نحمده و نصلي علي رسوله الكريم

Al Baraka's Undisputable Clear-cut Riba – Let the Evidence Speak

In the recent months there has been a definite disquiet in the public about the Shari'ah Compliance of Al Baraka Bank (S.A.). This has prompted us to present to the public a brief expose of some of our findings[1].

Should you be reading this?

We are fully cognisant that various people have different approaches to this subject.

Some would immediately respond by saying: Here we go again, another waste of time in senseless Al Baraka bashing. These persons have already made up their mind that, come hell or high water, no matter how much evidence is presented and no matter what proofs are adduced, they will never ever be able to accept that Al Baraka Bank could ever be involved in Riba. To such persons our advice would be not to be afraid of the truth. By burying our heads in the sand and ignoring the facts, the reality will not go away. We urge such persons to take up the courage and let the evidence be a reality check.

On the other hand there are many who have vaguely heard about some concerns around the bank, but have not had the opportunity to see the *corpus delicti*[2]. It is mainly at these people that this brief article is directed, to supply them with the actual facts upon which a sound opinion may be based. We believe this article would serve useful to the impartial searcher of the truth who is prepared to approach the subject with an open and fair mind.

In this regard we will present below just a few cases from amongst the many that have come to our attention. In preparing this article, we consulted with senior Ulama and prominent businessmen, whose valuable input and recommendations are appreciated.

The Bushra Case

One case that has made headlines is the Bushra case.

A brief outline of the facts of this case follows:

[1] Quotes from documents are presented in frames. The names of certain individuals have been blocked out.
[2] The objective proof behind a crime.

1. Bushra wanted to purchase a property from one Mr. Lipschitz. The said immovable property consisted land and an old building.
2. Bushra approached the bank for finance. The sale price was R2.2m, while the property was valued at R3m.
3. Bushra was prepared to lay down R440 000, while the bank would finance the amount of R1 760 000, thus totalling R 2.2m.
4. On 31 August 2006 the bank and Bushra entered into a "Property Financing Agreement: Musharaka".
5. Subsequently, since Bushra anticipated that he would require further funds to improve the buildings, he approached the bank for an additional loan of R 500 000. This was approved and both parties signed for it on 26 October 2006. Bushra did not take the half million as he did not receive the keys to the building and did not require it then.
6. Bushra eventually received the keys 31 March 2007. In the meanwhile the previous tenant had maliciously vandalised the property to the extent that the building was damaged beyond repair. Bushra informed the bank thereof, and they inspected the building. A new valuation was undertaken, and the damaged building and land was now valued at R1.3m.
7. Bushra then had the building demolished, and put up a new building on the land with his own funds.
8. Bushra approached the bank to share the losses incurred as the bank had alleged that they were co-owners in the property. In terms of Shari'ah, the co-owners should be partners in both profit and loss. Ever since then Bushra and the bank have been in dispute.

This then is the brief overview of the facts, without going into the details.

The Philosophy

One should understand that the western system of banking revolves around making money from money without taking conventional trading risks. Money is put in from one side, and more money comes out the other end. In this sense there is no such thing as "Islamic Banking". The Riba system of making money purely from money is accursed.

Essentially, the alternative that could be offered is for finance-houses to engage in normal trading activities to provide services whose end result may resemble conventional banking to some degree, while at the same time maintaining certain distinct differences. A properly constructed "Islamic Bank" is essentially a trading company like any other trader.

However, at present the so called "Islamic Banks" think and behave like their western counterparts. They share the same philosophy and mind-set. Their modus operandi is the same. The only difference is that they candy-coat their Riba activities with fancy nomenclature in order to fool the innocent public.

Risk Free

Western bankers do not take the type of risks that a conventional trader takes. In aping their western counterparts, the so called "Islamic Banks" are not prepared to undertake risks. They must secure and guarantee their returns, which is nothing besides Riba.

Genuine co-ownership of a financed asset would put the bank at risk. On the other hand a loan plus interest (conveniently called "profit") would obviate all risks. Hence the bank would rather structure its product as a loan instead of a real co-ownership agreement. It is for this reason that the bank offers the client a loan plus interest, which is clearly recorded so in the agreement.

Law of the Land

The bank would want to fool the public into believing that it has no alternative but to enter into a loan agreement. It would claim that the law of the land compels it to conduct its affairs in this manner.

This is mere hogwash aimed at pulling wool over the eyes of unwary public. It is nothing but pure deception. Nothing in the law prevents co-ownership of an asset. This can be constructed in a manner that conforms to the South African legal system, as well as Shari'ah. Such schemes have been implemented. Al Baraka's own Shari'ah Board will bear us out on this point.

However, Al Baraka is afraid of the risks involved; hence it is not prepared to explore the plausibility of this structure. Like conventional banks, Al Baraka thinks in terms of Riba and is not prepared to take risks.

On the other hand, should a finance-house be prepared to undertake the risks that are required in Shari'ah, we are prepared to offer them structures whereby this could be accommodated within the law of the land. At present Al Baraka and most of the so called "Islamic Banks" are simply not committed to taking the reasonable risks of a normal trader. It is this intransigent mindset that is the root of the problem.

The Loan

The bank's Financing Agreement is nothing else but a loan plus interest. In the case under discussion, the agreement records:

> 1.1 The Bank shall lend to the Client and the Client will borrow from the Bank the sum of **ONE MILLION SEVEN HUNDRED AND SIXTY THOUSAND RAND (R1 760 000.00)** to enable the Client to pay for and discharge the purchase price of the Property and obtain the registration of the transfer of the Property into the Client's name.

> 2.1 The capital amount of the LOAN shall be repaid in **ONE HUNDRED AND TWENTY (120)** monthly instalments.

> 3.1 The client shall in addition to the repayment of the LOAN pay to the Bank a monthly benefit calculated at the rate of **ELEVEN COMMA FIVE ZERO PERCENTUM (11.50%) plus all estimated costs and expenses including rates etc. for the maintenance and upkeep of the building which the Client is authorized to utilize for such purpose** on the capital of the LOAN outstanding at the beginning of each (30) thirty day period in respect of the first TWELVE (12) month period .

The so called "monthly benefit" is nothing else but clear-cut, unadulterated and accursed Riba.

The banks letter of 16 February 2007 clearly acknowledges that it is a loan. It records:

> The loan is secured by way of a first Continuing Mortgage Bond over commercial property described as Erf 867 & 869 Fordsburg Township in the sum of R2,970,000 in favour of Albaraka Bank Ltd.
> Mr. *** Moosa has also stood surety for the loan.

The Undeniable Loan

The two positions of loan and co-ownership are mutually exclusive. The same deal cannot be a loan, and simultaneously a co-ownership arrangement. The effect of each interpretation contradicts that of the other. We are either here or there. There is no scope for something that lies somewhere between.

As far at it being a loan, the bank unrepentantly stated that it is so. This would then mean that the extra sum being charged is nothing but blatant Riba. The bank cannot refute it being a loan.

In his letter, Bushra posed the question of it being a loan:

19 February 2008

Assalaamu alaykum

Shabir Chohan
AlBaraka Bank

Dear Sir,

RE: ERF 867 & 869

Our various correspondences on the above issue refer.

Upon taking further legal advice I have recently been informed that in the above matter our legal relationship stems from a Loan, i.e. the bank has granted me a Loan. The contract clearly records it so. I am hence bound to pay back the Loan as well as a gain which could be referred to as monthly benefit, finance charges, profit, interest or any other term you may wish to use. Kindly confirm this position.

If I do not receive a written reply within five (5) days from the date hereof, it shall be considered that you are in agreement.

Salaams

The bank's reply

FROM THE OFFICE OF THE CHIEF EXECUTIVE
SHABIR CHOHAN
E-mail : schohan@albaraka.co.za
Direct Telephone : 031 3662810
Direct Fax : 031 3052045

ALBARAKA BANK
AN AUTHORISED FINANCIAL SERVICES PROVIDER
Banking only one way,
the Islamic way

22 February 2008

Our Ref. : SC/mbj

MR [redacted] MOOSA
BUSHRA IMPORTERS & EXPORTERS
P.O. BOX [redacted]
FORDSBURG
2033

Dear Mr Moosa

As-Salaamu-Alaikum

BUSHRA IMPORTERS & EXPORTERS C.C.

I refer to your letter dated 15 February 2008 and 19 February 2008.

Please refer to the ruling of the Local Shariah Board held on 25 January 2008 as communicated to you in order to determine the position adopted by the Bank with regards to your transaction. The position has been made very clear in this correspondence.

Was-Salaam

SHABIR CHOHAN

Bushra's reply:

28/2/08

Assalaamu alaykum wa rahmatullahi wa barakaatuh

Shabir Chohan
Al Baraka Bank

Dear Sir,

RE: ERF 867 & 869

Your most evasive letter of 22 February 2008 has reference.

1. In my letter of 19 February 2008 I did not request the opinion of the Shariah Board, which is supposed to be an independent body separate from the Bank. I requested your confirmation as CEO of the Bank.
2. I am not aware of any ruling made on the 25th January 2008.
3. It terms of The Promotion of Access to Information Act 2 of 2000 in general, and s50 of the Act in particular, I am entitled to the information requested.
4. Your attention it drawn to the fact that the Code of Banking Practice of the Bank requires you to provide me the information.

5. My simple question is: In terms of my agreement with the Bank signed on 31 August 2006, does our legal relationship stem from a loan or not?
6. I await your clear, precise, explicit, unambiguous and non-evasive answer.

If I do not receive a satisfactory written reply within five (5) days from the date hereof, I shall consider lodging a complaint with the Ombudsman for Banking Services.

Salaams

The Bank's reply:

FROM THE OFFICE OF THE CHIEF EXECUTIVE
SHABIR CHOHAN
E-mail : schohan@albaraka.co.za
Direct Telephone : 031 3662810
Direct Fax : 031 3052045

ALBARAKA BANK
AN AUTHORISED FINANCIAL SERVICES PROVIDER
Banking only one way, the Islamic way

29 February 2008

Our Ref. : SC/ask

MR [redacted] MOOSA
BUSHRA IMPORTERS & EXPORTERS
P.O. BOX [redacted]
FORDSBURG
2033

Dear Mr Moosa

As-Salaamu-Alaikum

BUSHRA IMPORTERS & EXPORTERS C.C.

We refer to the above and to your telefax dated 28 February 2008, the contents whereof have been noted.

Our relationship stems from the terms and conditions in terms of the agreement signed by you on the 31 August 2006.

We note your intention to lodge a complaint with the Ombudsman for Banking Services in the event that you do not receive a satisfactory reply.

We have logged your query and have assigned an internal reference number thereto.

In all future correspondence to ourselves and to any other third party, including the Ombudsman, kindly quote the following **reference number : 290208.**

We reserve our right to reply to any allegation in your aforementioned telefax.

Assuring you of our best endeavors to address the queries raised by you, amicably.

Was-Salaam

Shabir Chohan

SHABIR CHOHAN

It is obvious that whilst the bank could deny the co-ownership, it could not negate the loan. Bushra's response was:

1/3/08

Assalaamu alaykum wa rahmatullahi wa barakaatuh

Shabir Chohan
Al Baraka Bank

Dear Sir,

Re: Letter with reference no. 290208

Your further evasion of 29 February 2008 has reference.

Since the agreement states that the Bank has granted a loan, it is taken that you concur.

Should you choose not to contest this by the 6th February 2008, I will proceed with the understanding that you agree that we signed for a loan.

Salaams

The master of evasion responded thus:

FROM THE OFFICE OF THE CHIEF EXECUTIVE
SHABIR CHOHAN
E-mail : schohan@albaraka.co.za
Direct Telephone : 031 3662810
Direct Fax : 031 3052045

ALBARAKA BANK
AN AUTHORISED FINANCIAL SERVICES PROVIDER
Banking only one way, the Islamic way

3 March 2008

Our Ref. : SC/ask

MR [redacted] MOOSA
BUSHRA IMPORTERS & EXPORTERS
P.O. BOX [redacted]
FORDSBURG
2033

Dear Mr Moosa

As-Salaamu-Alaikum

ERF 867 & 869 (REFERENCE : 2 9 0 2 0 8)

We refer to the above and to your fax dated 1 March 2008, the contents whereof have been noted. We re-iterate that our relationship stems from the terms and conditions in terms of the agreement signed by you on the 31 August 2006.

Your previous correspondence has given us reason to believe that you intend instituting legal proceedings herein. Your attempts in your fax dated 27 February 2008 and the present correspondence under reply has been nothing more than an attempt by you to gain certain pre-litigation admissions for reasons unknown to us.

We therefore once again reserve our right to reply to any allegation in your aforementioned fax under the appropriate circumstances.

Assuring you of our best endeavors to address the queries raised by you, amicably.

Was-Salaam

Shabir Chohan

SHABIR CHOHAN

Bushra's reply:

> 4/3/08
>
> Assalaamu alaykum wa rahmatullahi wa barakaatuh
>
> Shabir Chohan
> Al Baraka Bank
>
> Dear Sir,
>
> Re: Letter dated 3 March 2008 (reference no. 290208)
>
> We take note that you do not contest the loan.
>
> Salaams

The Superficial Defence

The bank may allege that it has merely recorded the transaction as a loan for legal purposes, but this is not the true intention of the parties.

This then raises the question of which interpretation will prevail: the loan or the supposed co-ownership. It is clear that the document has been designed in a manner that the loan interpretation takes preference. The document records:

> 4. The objective of the agreement which follows is to give effect to the provisions of the Scheme in a manner that will facilitate the implementation of the Scheme and to protect each others rights in terms of the laws of the Republic of South Africa according to which any agreement will be interpreted.

If the matter has to go to court, the document is formulated such that the loan interpretation prevails. Hence the bank is secured in receiving the loan plus interest. In other words it is only the interest (excuse the pun) of the bank that is secured. The rights of the client under a co-ownership agreement are not secured. According to the design of the document, the bank cannot loose any money, which is in line with the philosophy of western banking.

The Camouflage

In order to give some superficial Islamic hue to the Riba loan, the bank attaches a so called Musharaka (co-ownership) agreement as Annexure A to the Financing Agreement. As mentioned above, the annexure is supposed to be a private understanding that will not have any legal bearing. So the client is at the mercy of the bank. Should the bank wish it may decide to implement this private understanding; or should it so wish it could hold the client to the loan plus interest. Hence the rights of the bank are always secured, while the client is at the mercy of the corrupt and Riba-based merciless bank.

However, upon further scrutiny of the so called co-ownership annexure, numerous flaws come to light. Without exaggeration, if we had to go into details in debunking the fallacy and un-Islamic nature of the so called co-ownership annexure, this article will end up to be a book between 400 and 500 pages. We assure you this is not an overstatement. However, the brevity demanded by this brief article does not allow us the opportunity of analysing the so called co-ownership annexure in full.

Let us, for the exercise of this article, assume that the so called co-ownership annexure was in accordance with the Shari'ah and the SA law. We are still faced with various other problems that emerge in this case.

The Client's Rights

Under this agreement of loan, the client's rights are suppressed. If the bank takes the matter to court, it will claim the loan and interest. If it is a co-ownership, then the client has no judicial forum before which it could claim its rights that flow from a co-ownership agreement.

Bushra has contended that the agreement is one of co-ownership, and hence the bank should share the loss that came about through the vandalism of the previous tenant. But where does Bushra go to in order to enforce his Islamic rights, or the so called co-ownership annexure? Bushra has repeatedly requested the bank to submit to the arbitration of an independently constituted forum of Ulama. Al Baraka bank has flatly refused any external Aalim or Islamic Judicial Body from arbitrating on the matter.

Insurance

Conventional insurance is unanimously impermissible. It involves two haraam factors: Qimaar (gambling) and Riba (interest). Yet we find that the bank insisted that Bushra, at is own expense, insure the property. The document records:

> 7.2. **SHORT TERM INSURANCE**
> All property provided as security for the LOAN shall be insured to the satisfaction of the Bank against such risks that the Bank may require and with an insurer acceptable to the Bank. The Bank shall have the right, exercisable at its discretion, to procure the required insurance cover and recover the amount thereof from the Client upon demand.

The Riba contract of the loan is compounded with another Haraam transaction involving both Qimaar and Riba.

The feeble excuse presented by Al Baraka is that this is a requirement of the law. Assuming for a moment that this contention is correct and that it is a requirement of the law, then it will nevertheless remain haraam. The fact that the law may require loans to be secured by insured assets does not justify the entering into the insurance.

The client always has the option of not taking the loan. The law does not compel the client to take the loan. It would merely say that should you take the loan, it has to be with insurance. Hence there is no compulsion on the client that could possibly be used to justify the Haraam insurance transaction.

To elucidate this through a simple example, assume hypothetically that a law comes out that one may only purchase a Kit-kat bar with a bottle of wine, and it is illegal to sell it alone. The simple solution would be to abstain from buying a Kit-kat bar. One is never compelled to do so.

The Haraam factor of insurance merely intensifies the already Haraam issue of the loan plus interest.

The very clause contradicts the so called co-ownership annexure. If the bank and client were co-owners, then the expense of insuring the asset (assuming that it is a valid expense) would have to be shared.

The Spurious Cover Story

In order to camouflage the loan Al Baraka has come up with the so called co-ownership annexure. However, in order to do this it had to resort to blatant forgery. As mentioned above, the purchase price of the property was R2.2m. Al Baraka then resorts to fraud in its so called co-ownership annexure and records the purchase as R3m. This is clear-cut forgery and fraud.

3.	**NUMBER OF UNITS IN THE PROPERTY**	:	The Property is divided into **ONE HUNDRED** (100) units.
4.	**NUMBER OF UNITS PURCHASED BY THE BANK CLAUSE 1.1.:**		**59%**
5.	**PURCHASE PRICE PAYABLE BY THE BANK FOR EACH UNIT CLAUSE 1.1 :**		**THIRTY THOUSAND RAND (R30 000.00)**
6.	**TOTAL PURCHASE PRICE PAYABLE BY THE BANK FOR THE UNITS -CLAUSE 1.1:**		**ONE MILLION SEVEN HUNDRED AND SIXTY THOUSAND RAND (R1 760 000.00)**
7.	**NUMBER OF UNITS PURCHASED BY THE CLIENT CLAUSE 1.1 :**		**41%**
8.	**PURCHASE PRICE PAYABLE BY THE CLIENT FOR EACH UNIT CLAUSE 1.1 :**		**THIRTY THOUSAND RAND (R30 000.00)**
9.	**TOTAL PURCHASE PRICE PAYABLE BY THE CLIENT FOR THE UNITS - CLAUSE 1.1 :**		**ONE MILLION TWO HUNDRED AND FORTY THOUSAND RAND (R1 240 000.00)**

The above is crystal-clear fraud in succinct black and white. This is what the so called "Islamic Bank" had to resort in order to give some credence to its Haraam loan and interest transaction.

The Conspicuous Riba Nature of the Contract

The Riba of the contract is so striking that the in-house Shari'ah Department member, Maulana Bilal Jakhura, had no option but to concede that the contract was in contravention of the Shari'ah. Bushra was on the phone with him put the question to him. He admitted that the deal was not Shari'ah Compliant. Bushra quickly put it down on paper and faxed it off to the bank.

May 17, 2007 11:52AM

TO WHOM IT MAY CONCERN

RE: ACKNOWLEDGEMENT

This serves to confirm that I received a call today from Moulana Bilal Jakhura. We discussed my Musharaka Agreement with yourselves and he has confirmed that the document signed by myself is not 100 % Shariah Compliant.

Thanking you

Yours faithfully

No denial has ever come forth. Further to this, the same fax was presented to the bank and its Shari'ah Supevisory Board on 4 February 2008. Maulana Bilal's statement was never contested. In fact the management and the Board were very upset with his admission, and have been referring to Maulana as young, inexperienced and still learning the ropes of the game. We commend Maulana Bilal for standing his ground and being straightforward in the interest of the Shari'ah. May Allah Ta'ala grant him even more courage to stand up for the truth, like his predecessor Maulana Joosab.

Difference of Opinion

Some persons totally ignorant of the issues on hand have attempted to becloud the matter by claiming that it boils down to a difference of opinion. We are not aware of a single Aalim that contends that the deal was in compliance with the Shari'ah. If there was, it could possibly be said that there is a difference of opinion. The fact is that not a single Aalim is prepared to put pen to paper and attest to the Shari'ah validity of the deal. There is no such thing as a one sided difference. When everyone is on one side, how can a difference exist? Can any sane Aalim ever put his signature of approval to a manifest contract of Riba?

The Plot Deepens

Let us be generous to Al Baraka and go along for the moment with the so called co-ownership annexure. Let us accept that there is some cover-up story, no matter how corrupt and indefensible this cover-up story may be. The so called co-ownership annexure at least attempts to put some disguise and mask over the real transaction of loan and interest.

The fabulous phantom story goes like this: Bushra has purchased 41% of the property, and Al Baraka has purchased 59%. Each year Al Baraka will sell to Bushra a few units at a mutually agreed price. Bushra would after 10 years have purchased all the shares of Al Baraka.

While many questions do arise, we will for the moment accept that this story is plausible.

However, at the point where ownership was 41:59, Bushra applied for a further loan of half-a-million Rands. This was approved and granted. It was recorded as an addendum to the Musharaka Agreement and signed by both parties on 26 October 2006. The interest rate was fixed at 11.5% per annum. As mentioned above, Bushra did not require the cash immediately, and hence did not take the half-a-million Rands. Later on the dispute broke out between Bushra and the bank. As a result Bushra approached many Ulama for a ruling on his case.

Now here comes the issue of which particular note should be taken. The first loan of R1.76m had a fantasy cover story to it. It at least had the so called co-ownership annexure, for whatever it may be worth, to give it some Islamic disguise and hue.

The second loan of half-a-million had no cover-up story whatsoever. It is purely a loan plus interest. It is stark, unadulterated and crude Riba -- No cover-ups, no Islamic terms to disguise it, and no camouflage.

The Bank Panics

Unfortunate for the bank, Bushra was somewhat of a loudmouth. The bank made a number of attempts to buy him off and settle his case. They presented various offers but he was not budging. What he was insisting was his Shar'ee rights, which the bank was trying to avoid.

Bushra then approached a number of Ulama to take up his case. Now if these Ulama were to see the contracts, they would obviously take serious issue with Al Baraka. The Haraam Riba loan was so conspicuous and glaring that a blind mind would not miss it. The bank found itself in serious waters, and had to bail itself out in some way.

The only option it had was to make the second loan agreement **DISSAPEAR**. Yes, Bushra did not have a copy, so if the bank denied the existence of the second loan it would save its soul. Otherwise, all and sundry would be able to see in clear black and white that the bank was engaged in undisputable Riba. It was so distinctly obvious that this was a Riba agreement that the Shari'ah Board would not have been able to offer any excuse whatsoever. So the easy solution was to deny the second loan.

Bushra was aware that he signed it, but he did not have a copy. So the circumstances were ideal to make it vanish. After all, its existence would be proof that the so called Islamic Bank was involved in clear incontestable Riba. Thus the agreement had to evaporate into thin air.

Bushra, is his memorandum of 4 February 2008, drew the attention of the bank to the fact that the second loan was approved. The bank simply denied the existence of the second loan.

Bushra then phoned Rukshana at Head Office who was in charge of legal documents. She denied that the second loan was signed. The conversation was recorded.

The bank denied the existence of the loan agreement in its email of 4 February 2008

> As salaamu alaikum
>
> With reference to your letter dated 28.01.2008 the only Musharaka Agreement with regards to Erf 867 & 869 Fordsburg as per my records is the one dated 31 August 2006.
>
> I trust that the above meets your requirements
>
> Was salaam
>
> Mohammed Kaka

On 12 March 2008, Bushra requests a copy of the addendum recording the second loan. The text of his letter was:

> Assalaamu alaykum wa rahmatullahi wa barakaatuh
>
> Shabir Chohan
> Al Baraka Bank
>
> Dear Sir,
>
> RE: ERF 867 & 869
>
> Mufti Zubair Bhayat has informed me that an arbitration on the above matter is imminent. Although I have not received written confirmation thereof, I trust he has been mandated by the bank to arbitrate the matter.
>
> The original agreement in respect to the above matter was signed on the 31st August 2006. Approximately two months thereafter an approval for a further finance of R500 000 was confirmed and signed between myself and the bank. Could I kindly have a copy of the duly signed latter agreement as this is material to my case.
>
> Thanking you.
>
> Salaams

The bank responded to Bushra on 20 March 2008, in which it denied the existence of the second loan.

Finally, for information, as requested in your letter dated 12 March 2008, we refer to the e-mail sent to you on 4 February 2008 in which we again confirmed that the only agreement we have on file pertaining to your transaction is dated 31 August 2006.

Bushra then made a further request for the document. His letter reads:

25/3/08

Assalaamu alaykum wa rahmatullahi wa barakaatuh

Shabir Chohan
Al Baraka Bank

Dear Sir,

RE: ERF 867 & 869

I am in receipt of your letter dated 20 March 2008, and note the contents.

Since the letter is long, I will consider the various points raised therein and revert to you. However at present I wish to address the issue mentioned in the last paragraph.

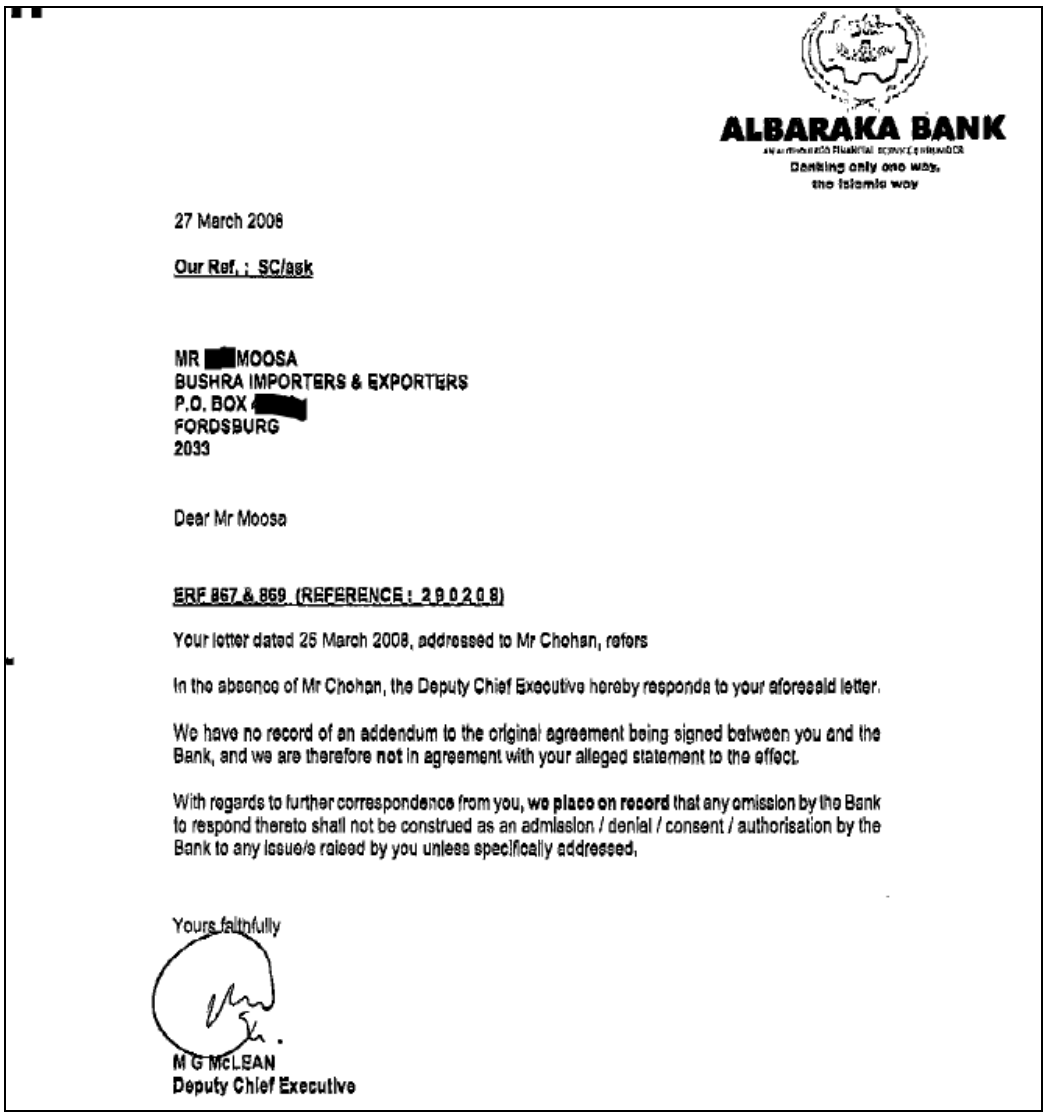
I distinctly remember that an addendum to the original loan agreement was signed between myself and the Bank. This addendum covered a further loan of R500 000. It was signed at the Fordsburg Branch sometime in October or November of 2006.

Should no explicit denial of this mutually signed agreement be forthcoming from you within 48 hours of receiving this email, I shall take it that you are in agreement with the facts presented above.

Thanking you.

Salaams

The bank's response was the following:



ALBARAKA BANK
Banking only one way,
the Islamic way

27 March 2008

Our Ref. : SC/ask

MR [redacted] MOOSA
BUSHRA IMPORTERS & EXPORTERS
P.O. BOX [redacted]
FORDSBURG
2033

Dear Mr Moosa

ERF 867 & 869 (REFERENCE : 290208)

Your letter dated 25 March 2008, addressed to Mr Chohan, refers

In the absence of Mr Chohan, the Deputy Chief Executive hereby responds to your aforesaid letter.

We have no record of an addendum to the original agreement being signed between you and the Bank, and we are therefore **not** in agreement with your alleged statement to the effect.

With regards to further correspondence from you, **we place on record** that any omission by the Bank to respond thereto shall not be construed as an admission / denial / consent / authorisation by the Bank to any issue/s raised by you unless specifically addressed.

Yours faithfully

M G McLEAN
Deputy Chief Executive

There we have it, a clear and straight forward denial of the second loan agreement. Yet Bushra was certain he signed it.

In the meanwhile the bank realised that it was in real trouble. Should the Ulama become aware of the second loan document, it would be absolutely clear that the bank engages in Riba. No Aalim in the world will be able to present even some far-fetched interpretation of the undisputable Riba loan. The document had to be denied at all costs.

The next step the bank had to take was to revise the procedure by which these addition loans were given. As indicated above, attached to the first loan was a camouflage story of co-ownership. The same had to now be undertaken with the subsequent loans.

The bank got its in-house member, Maulana Bilal Jakhura, to go to all the branches and "re-educate" the staff on how to undertake the second loan. New documents were drawn up that would have a whitewash story. The second loan was thereafter disguised as a purchase of equity by the bank from the client.

The striking thing is that the Maulana is fully aware of the procedures of the past, and that the loans of the past were incontrovertible Riba. No matter whose standards you apply, the Riba is so egregious that no sane Aalim in the world would want to attempt to justify it. He tries to satisfy

himself by assisting in what he would say is 'remedial action'. A convenient blind-eye was cast to the Haraam Riba activities of the past, of which he was fully aware.

A Miracle

Bushra was convinced that the bank was resorting to fraud to cover its tracks. The problem was that he lacked the evidence to prove it.

The inherent nature of baatil (falsehood) is that is has to be covered up by lies, and further lies to cover-up the earlier lies. Common everyday observation will confirm this. On the other hand the truth is so sweet that although a person finds himself in a predicament from which there is no apparent escape, the help of Allah Ta'ala is with the Haq (truth). The Haq must eventually prevail over the baatil. To ensure this, Allah Ta'ala has His ways, which may appear mysterious to us. Allah Ta'ala always assists the downtrodden and oppressed.

Not long ago we had the Khalid Rashid matter before the courts. While everyone knew that the government was responsible for his rendition, there was no admissible proof. Through the Divine plan, the "samoosa file" appeared which provided the much needed evidence. So too did a miraculous event occur for Bushra.

On 12 March 2008 Bushra visited the Fordsburg Branch of the bank to request copies of some other documents. He met with Mohamed Kaka, who at the time was the Regional Manager. Mohamed Kaka presented the requested documents to Bushra in an envelope. When Bushra went back to his office, he discovered that the envelope also contained some other documents besides those requested.

One of these was the following internal memo:

ALBARAKA BANK

Reg. No : 1989 / 003295 / 06

FORDSBURG

BRANCH

MEMO

TO : MANAGEMENT / EXECUTIVE CREDIT COMMITTEE

FROM : Tameem Dasoo

DATE : 05 October 2006

As-salaamu-alaikum

CLIENT: Bushra Importers And Exporters CC MIDAS NO : 953080

PURPOSE OF SUBMISSION

Seeking approval for temporary excess pending the Mushraka purchase of equity facility amounting to R 500 000.00

BACKGROUND

We refer to our application dated 20 August 2006 wherein approval was sought and granted for the mushraka purchase of commercial property .We submit herewith a copy of the request.

The client has now requested additional funds of R 500 000.00 that will be used to pay for capital expenditure which relates to roof repairs. Our client requires this money urgently as he will be occupying the premises once the bond is registered.

The client proposes that the 2nd deal of R 500 000 be done on a 120 months basis with instalments being calculated on a rate of 11.50% per annum. These funds to be released only upon registration of the bond.

RECOMMENDATION

The clients are well known to us and have proven to be astute businessman. Repayments will be easily affordable and accordingly recommend approval of the facility on the basis sought.

Was-salaam

SALES

CREDIT

ANNEXURES A - _____

ANNEXURES B - _____

ANNEXURES C - _____

ANNEXURES D - _____

How was it that the second loan, which according to the bank did not exist, suddenly appears in one of the memos of the bank? Why was the bank so eager to conceal this document? What did the bank have to hide? At most it was a loan. If Bushra were to enforce the loan, it would be to his detriment and to the advantage of the bank. The bank would receive the agreed interest and no further risk to itself. Why would the bank want to make this document disappear? The affair did not make sense and was sinister indeed.

Included was another memo as well:

ALBARAKA BANK

Reg. No : 1989 / 003295 / 06

FORDSBURG BRANCH

MEMO

TO : SHARIAH SUPERVISORY BOARD

FROM : MOHAMMED KAKA

DATE : 22 AUGUST 2007

As-salaamu-alaikum

CLIENT: BUSHRA IMPORTERS & EXPORTERS C.C.

PURPOSE OF SUBMISSION

Provide the Board with background to the Musharaka transaction between Bushra Importer & Exporters c.c. (Bushra) and Albaraka Bank Limited (ABL).

BACKGROUND

Bushra has been a customer of ABL for numerous years and previous dealings included trade and motor vehicle finance on a Murabaha basis.

During August 2006, Bushra made an application to purchase the commercial property adjacent to him in the sum of R2,200,000 from Howard Neil Lipshitz. Howard had in-turn acquired the property from Dyson Inc acting as liquidators on behalf of Nedbank Limited in the matter between Palan Investments c.c. and Nedbank Limited.

Palan Investments c.c. was owned by one [redacted] who also operated Gruntel (Pty) Ltd. Gruntel claimed that it had a lease with Palan Investments c.c. and refused to vacate the premises once transfer had taken place to Bushra.

Bushra and ABL entered into a 10 year Diminishing Musharaka over the said property. The contributions were as follows:

Bushra	R 440,000	20%
ABL	R1,760,000	80%
Cost	R2,200,000	

Coupled with the acquisition, Bushra applied for an additional R500,000 in order to effect minor alterations to incorporate the building with the existing premises. At that time ABL misinterpreted the Shariah ruling on increases in value of the property, and as the property was valued at R3,000,000 ABL approved the purchase of R500,000 additional equity in the property. Due to this error the original Musharaka documents reflect the following with regards to the first transaction:

Bushra:	R1,260,000	41,33%
ABL:	R1,760,000	58,67%
Value:	R3,000,000	

Further we signed the documents for the Musharaka purchase of additional Equity in the sum of R500,000. (As referred to above) These monies were never paid over.

Transfer of the property took place in December 2006, whilst Bushra was overseas performing Haj. The second sale i.r.o. units sold for the year was not concluded, however payment of R24,744.80 representing the first month's instalment was received in January.

In February 2007, Bushra informed ABL that [redacted] refused to vacate the premises and Bushra, together with Dyson were in the process of obtaining an eviction order. The client expressed concerns with making repayments whilst not having occupation of the property, and a meeting was held between him and ABL wherein it was decided that payments would be postponed until Ameen was evicted.

An eviction order was granted, the order was appealed, and the order was upheld all within the two month period of February and March.

When [redacted] was finally evicted, he caused serious damage to the subject property. The property had electrical cabling, ceilings, floor and wall damage. An engineers report indicated that the foundation was damaged due to a hose being placed into the ground in order to weaken the foundation.

ABL's valuator had valued the property at R1,300,000.00 on 17.04.2007 and the property was previously valued at R3,000,000 on 16.08.2006. The report makes mention of damages including water damage, damage to roofs, removal of doors, and burglar proofing, etc.

Bushra informed his insurance company ([redacted] Insurance) about the damages, but his claim was refused under the grounds that the diminution in value was as a result of 'theft' and not 'malicious damage to property'.

Bushra approached ABL for funds to repair the building and R800,000 purchase of equity was conducted on a different property in order to effect the necessary repairs. At the time of requesting the Musharaka for R800,000 our client expressed no intention of claiming any portion of the damages from ABL. ABL hence also recommended selling its entire 80% in the property for the sum of R2,969,376.00 being R1,760,000 at a mark-up of 11,5% over 120 months.

Bushra refused the offer, claiming ABL were not sharing in the loss of value of the property. ABL then proposed selling the 80% at R2,469,274 being R1,300,000 at a mark-up of 14,5% or at R1,300,000 cash. This offer was also refused.

Numerous meetings have been held with the client, however the client has yet to issue us with a written proposal from his side. The client has also commenced paying R24,744.80 since June 2007, however he has indicated that this is merely out of goodwill and must be adjusted against the final outcome of the transaction.

Was-salaam

SALES **CREDIT**

This memo was stranger than the first. Internally the bank has called the inexplicable change of equity from 80:20 to 59:41 an error. This was admitted internally on the 22 August 2007. Previous to this Bushra received scores of letters from the bank on the controversial deal. At no stage did the bank ever admit that it made an error. This it kept to itself internally, while deceiving Bushra that all was above board with the deal he signed. The bank had a moral and legal duty to inform Bushra that it had made an "error", and steps should have been taken to correct the "error". Instead, the bank concealed this from Bushra and expressed the view that Bushra was bound by the terms of the incorrect agreement. This is yet another example of the deception applied by the bank to cover it iniquitous contrivances and gross incompetence.

The memo emphatically states:

> "Further we signed the documents for the Musharaka purchase of additional Equity in the sum of R500,000."

Compare this with the statement of 27 March 2008, where it was stated:

> "We have no record of an addendum to the original agreement being signed between you and the Bank, and we are therefore not in agreement with your alleged statement to the effect."

The glaring contradictions and lies are self evident! The question is why? To conceal the irrefutable Riba!

The memo was addressed to the "Shariah Supervisory Board". In other words, the members of the "Shariah Supervisory Board" were well aware of the true facts, yet they colluded with the bank in concealing the signed documents. They were accessories after the fact, and were equally guilty. And we know why!

Just as Bushra was consulting with his lawyers to take the matter to court, one of his relatives received a strange envelope in the post. It was obvious that it was intended for him. It was the actual signed document that he was all along being denied. According to the bank it did not exist. They say it was never signed, while Bushra clearly remembered that it was. Now he had it in his hand, and was ready to go to court. Here is the miracle:

ADDENDUM TO MUSHARAKA AGREEMENT DATED

31 AUGUST 2006

entered into

Between:

ALBARAKA BANK LIMITED
(Registration Number: 1989/003295/06)

[Hereinafter referred to as "the Bank"]
[Hereinafter together with it's successors in office or assigns]

And:

BUSHRA IMPORTERS AND EXORTERS CC
(Registration Number : 1997/012775/23)

[Hereinafter referred to as "the Client"]
[Hereinafter together with its heirs, executors, administrators or assigns]

WHEREAS:

Albaraka Bank Limited approved finance in the sum of **One Million Seven Hundred and Sixty Thousand Rand (R1 760 000.00)** to the Client to purchase the immovable property described as;

Erven 867 & 869 Fordsburg, Johannesburg.

In respect of which the Client concluded a Property Financing Agreement with the Bank on 31 August 2006.

AND WHEREAS:

The Client hypothecated the above immovable property in terms of a First Continuing Covering Mortgage Bond, which was registered by the Client in the sum of **Three Million Rand (R3 000 000.00)** plus a contingency sum of **Seven Hundred and Fifty Thousand Rand (R750 000.00)** as security for the indebtedness of the client in favour of the Bank on _____.

(cont. .../...p2)

AND WHEREAS:

The Client acknowledged and declared that the sum of **One Million Seven Hundred and Sixty Thousand Rand (R1 760 000.00)** is repayable in **One Hundred and Twenty (120)** monthly instalments commencing 30 days from date of advancement by the Bank.

AND WHEREAS:

On 05th October 2006 the Client applied to the Bank for further finance in the sum of **Five Hundred Thousand Rand (R500 000 .00)** to purchase additional equity in the above property which finance the Bank has approved.

AND WHEREAS:

The Client acknowledges and declares that the sum of **Five Hundred Thousand Rand (R500 000.00)** will be repayable by the Client in **One Hundred and Twenty (120)** monthly instalments commencing 30 days from the date of advance by the Bank.

AND WHEREAS:

The Bank and the Client have declared and accepted that in terms of the Musharaka transaction (Property Financing) the present value of the above property is **Three Million Rand (R3 000 000.00).**

AND WHEREAS:

The Client acknowledges and declares that the new monthly instalment payable to the Bank in respect of the additional purchase of equity will be the sum of **Thirty One Thousand Seven Hundred and Seventy Four Rand and Fifty Seven Cents (R31 774.57)**

The respective instalments arising from the various equity purchases will however be reviewed on the anniversary date of the Musharaka Transaction.

(cont. .../...p3)

NOW THEREFORE :

I, the undersigned,

[redacted] MOOSA
(Identity Number : [redacted])

[In my capacity as Member of BUSHRA IMPORTERS AND EXPORTERS C.C. who warrants that I am duly authorised hereto]

do hereby confirm that **BUSHRA IMPORTERS AND EXPORTERS C.C.** is bound by the terms and conditions of the Musharaka Agreement dated 31 August 2006, the Annexures attached thereto and all Addendums arising therefrom.

SIGNED AT JOHANNESBURG **THIS** 26TH **DAY OF** OCTOBER **2006**

AS WITNESSES:

1. .....

2. .....

[redacted] MOOSA
FOR AND ON BEHALF OF BUSHRA IMPORTERS AND EXPORTERS C.C.
Member/s who warrant/s that he/they is/are duly authorised hereto.

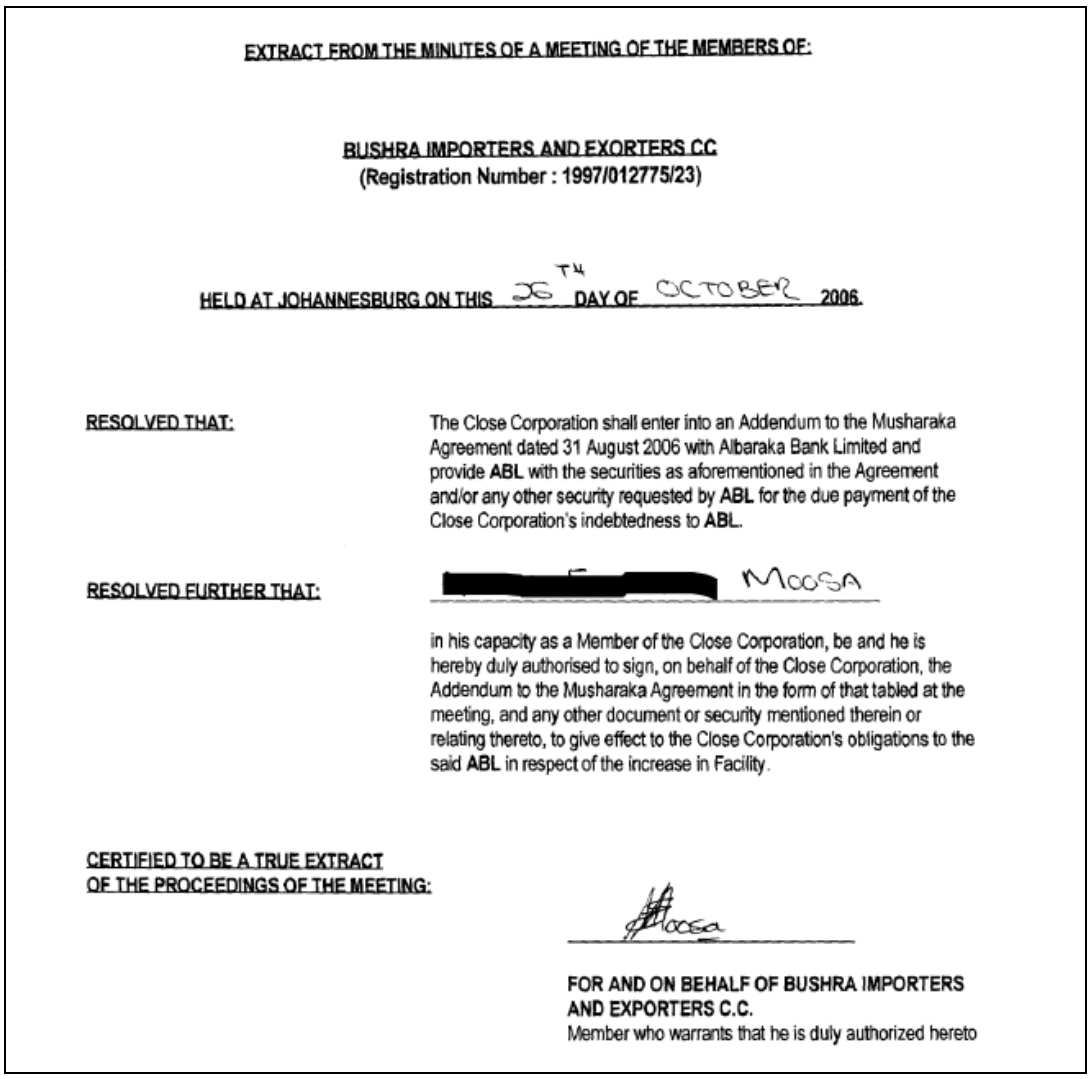
SIGNED AT JOHANNESBURG **THIS** 26th **DAY OF** OCTOBER **2006**

AS WITNESSES:

1. .....

2. .....

For and on Behalf of
ALBARAKA BANK LIMITED



EXTRACT FROM THE MINUTES OF A MEETING OF THE MEMBERS OF:

BUSHRA IMPORTERS AND EXORTERS CC
(Registration Number : 1997/012775/23)

HELD AT JOHANNESBURG ON THIS 25TH DAY OF OCTOBER 2006.

RESOLVED THAT: The Close Corporation shall enter into an Addendum to the Musharaka Agreement dated 31 August 2006 with Albaraka Bank Limited and provide **ABL** with the securities as aforementioned in the Agreement and/or any other security requested by **ABL** for the due payment of the Close Corporation's indebtedness to **ABL**.

RESOLVED FURTHER THAT: [redacted] MOOSA

in his capacity as a Member of the Close Corporation, be and he is hereby duly authorised to sign, on behalf of the Close Corporation, the Addendum to the Musharaka Agreement in the form of that tabled at the meeting, and any other document or security mentioned therein or relating thereto, to give effect to the Close Corporation's obligations to the said **ABL** in respect of the increase in Facility.

CERTIFIED TO BE A TRUE EXTRACT
OF THE PROCEEDINGS OF THE MEETING:

Moosa

FOR AND ON BEHALF OF BUSHRA IMPORTERS AND EXPORTERS C.C.
Member who warrants that he is duly authorized hereto

The Escape Plan

When Bushra's lawyers filed their intention to take the matter to court, they presented in their bundle of documents the second loan addendum, duly signed, which was not supposed to exist. This was a shock to the bank and put them in a truly awkward position. Their conduct legally amounted to fraud, and the Reserve Bank would revoke their banking licence. The fraud would be easy to prove in black and white. Like the Riba loan, it was irrefutable.

In an attempt to sweep away the entire matter, they made Bushra an offer unprecedented in the history of the bank. Once Bushra would accept their offer; the matter could be quashed once and for all. With such a large captivating bait, the big fish was caught and Bushra paid the settlement amount. The bank thought the matter was water under the bridge.

No Escape

What the bank has failed to realise is that Riba will not become Halaal by settling with Bushra. Even though Bushra accepted their offer, it cannot undo the Riba contract. Our complaint is in respect of Riba, and not the satisfaction of any particular client. It has been clearly demonstrated that a bank professing to be "Islamic" has been engaging in distinct open Riba. This is undeniable.

An Isolated Case

Al Baraka will attempt to further compound its deception by claiming that the Bushra matter was an odd isolated case that went sour. However, sight must not be lost of the fact that the contracts signed by Bushra were standard contracts of the bank at the time. Bushra was not the only client to

sign such contracts. These were off-the-shelf documents not exclusive to Bushra. Hence, the same principle has to apply to all other clients that signed the same set of documents.

Further, the Riba documents were approved by the so called "Shariah Supervisory Board". The Bushra fiasco speaks volumes of their competence.

The question arises as to what happens to all the Riba earned by the bank over the years. It is these very Riba funds that are being passed over to the depositors under the name of "profit". The Riba funds have contaminated the entire system.

The Queensend Case

In this case, B wanted financing and approached the bank with the following proposal. The fixed property he owned would be sold to the bank, and the bank will then sell the fixed property at a profit to a Closed Corporation in which B and another each held 50% membership.

Initially the Closed Corporation was to be called "K & D Investments CC", but was later registered under the name "Queensend House CC".

There are many indications that this facility was nothing else but a Riba based loan. These are taken from the documents prepared by the bank itself.

1. The document of the bank recording the repayment schedule is titled "Albaraka Loan Amortisation."

2. The End of Clause 8 of the Mortgage bond agreement records:

> **The moneys expended by the Bank in connection therewith shall immediately be claimable from and repayable by the Mortgagor on demand and shall be secured and preferent under the Bond and shall bear interest on the same basis as the other debts secured by the Bond.**

   In other words, the so called Murabaha facility bears interest. Furthermore, should the bank need to spend on the property, it is entitled to claim the amount spent plus interest, in a similar fashion as it is claiming interest on the original Murabaha facility.

3. Clause 9 repeats a similar position in respect to levies, rates, etc.

9. LEVIES

The Mortgagor shall, on or before due date, pay all levies, rates, charges, insurance premiums, rent and other imposts and fees of whatsoever nature which may at any time become owing to the Body Corporate, any competent Public or Local Authority or any creditor of the Body Corporate in respect of the mortgaged unit and shall produce proof to the Bank of such payments. In case the aforesaid levies, rates, charges, insurance premiums, rent or any imposts or portion thereof remain unpaid after due date, the Bank shall be entitled but shall not be obliged to pay such amounts on behalf of and without reference to the Mortgagor and without waiting until the Mortgagor is in default therewith, and any and all such amounts so expended shall be preferent under the Bond and shall bear interest on the same basis as the other debts secured by the Bond and shall be immediately claimable by the Bank from the Mortgagor.

4. Not only does the bank inform us that it will charge interest, but such interest shall take preference over the rights of any other creditors. Clause 16 reads:

16. PREFERENCE OF INTEREST

In the event of the sequestration or winding up or liquidation as the case may be or in any competition amongst creditors, as to their legal order of preference, interest shall be secured preferentially to such extent as by law preference is allowed to interest.

5. A Murabaha facility is supposed to function with a fixed mark-up. Even an early or late payment is not supposed to affect the fixed price. One therefore wonders how in clause 20 the indebtedness could be related to the rate of interest and the period for which the interest is calculable. The clause reads:

20. PROOF OF INDEBTEDNESS

The amount of the indebtedness to the Bank at any time which is secured by this Bond (including interest and the rate at which and the period for which interest is calculable) and the fact that such indebtedness is due and payable may be determined and proved by a Certificate signed by any Manager or Administrator of the Bank whose appointment and authority to sign need not be proved. Such certificate shall be prima facie proof of the facts therein stated and shall constitute sufficient evidence thereof unless and until contrary facts are proved by the Mortgagor.

6. One is at pains to understand how a Murabaha facility would have interest, and would be referred to as "money lent and advanced". The only inference we can draw that it was not a Murabaha facility but a straight forward interest bearing loan. Refer to clause 23 below.

23. CONTINUING COVERING SECURITY

This Bond shall, so long as it remains in existence, and even if all sums due hereunder are repaid to the Bank, be a continuing covering security up to the capital sum, interest, the further sum for all and any sums of money which shall now or may in future be owing to or claimable to the Bank, for money lent and advanced or which may hereafter be lent and advanced by the Bank, or for any other cause of debt including any contingent payment made by the Bank, in terms of the conditions of this bond, expenses off notices, charges incurred or made in respect of the recovery of any sums due hereunder or for other services rendered including collection commission and costs connected with this bond whether they may be specifically described herein or not, but it is declared that preference for any of the foregoing contingent payments made by the Bank to protect its security, or costs in

7. Clauses 25.1, 25.1.1, 25.1.9 and 26 shed more light on the issue.

25. DEFAULT BY MORTGAGOR

25.1 The Mortgagor shall be deemed to be in breach of the Mortgagor's obligations in respect of the loan, if:

25.1.1 the Mortgagor fails to pay any amount due in terms of the loan or any other amount due to the Bank in respect of any other liability of whatsoever nature to the Bank on due date or commits a breach of any other provisions of the loan or the Bond (whether such breach is material or not); or

25.1.9 the Mortgagor generally does or omits to do or suffers anything to be done which may in any way prejudice the Bank's right or security under the loan or by which the Bank may suffer any loss or damage;

26. ARREARS

If at any time the Mortgagor is in arrears with any payment in terms of the loan, the Bank shall be entitled at its election;

Initially it was agreed that the cc will pay B the sum of R230 000; whilst the bank will pay B the sum of R700 000. This would make the purchase price R930 000.

Thereafter the cc required a further R60 000 to make improvements on the property. The proposal was then changed to the following: The bank will pay R760 000 to B, and the cc will pay R230 000. The total purchase price would then be R990 00.

The bank would then sell the property to the cc for R1 434 000. The proposed mark-up was thus R674 000.

The above arrangement was clearly inconsistent with the principles of Murabaha. If the bank was purchasing the property from B, why would the cc have to pay B the sum of R230 000. The cc was not purchasing the property from B. It was supposed to be the bank that was purchasing the property, and then selling it to the cc.

The agreement dated 9 November 1994 records the following:

The terms and conditions of the facility are as follows:

1. **AMOUNT OF FACILITY**

Cost	R 760 000.00
ABL Profit	R 674 000.00
Selling Price	R 1 434 000.00

Instead of costing R990 000, the property now cost R760 00. This glaring discrepancy was brought to the attention of the bank. In its letter of 30 December 2004, the bank attempted to offer the following explanation.

5. The profit margin and instalments were set out in paragraphs 1 and 2 respectively on page two of the said document.

It must be brought to your attention though that paragraph 1 on page 2, ought to have set out the figures as:-

PURCHASE PRICE	R 990 000.00
ABL PROFIT	R 674 000.00
SELLING PRICE	R 1 664 000.00
LESS: DEPOSIT PAID	R 230 000.00
BALANCE	R 1 434 000.00

Instead of:-

COSTS	R 760 000.00
ABL PROFIT	R 674 000.00
SELLING PRICE	R 1 434 000.00

Page Three./....

PAGE THREE

The reason for document reflecting the latter above, was that initially the application was under the name of K & D Investments CC, which later changed to Queensend House. In restating the figures, the apparent shortened version was chosen to set out the figures.

The end result is as far as the amount due is concerned is the same, and there is no prejudice to the client.

It is just that the first breakdown sets out the Selling price of the first sale by the Supplier to Albaraka Bank Limited.

The client having negotiated the said Selling Price as the agent of Albaraka Bank Limited in respect of the first sale, was well aware of the price that Albaraka Bank Limited paid to the Supplier viz R 990 000.00.

Firstly, the bank acknowledged, although in not so many words, that there was a discrepancy. Hence it had to give some fanciful interpretation for the variance in the figures.

Secondly, the excuse tendered is an insult to intelligence. While we acknowledge the name of the cc changed from "K & D Investments CC" to "Queensend House CC", that could be no reason for the figures being incorrectly reflected.

Thirdly, the two sets of figures have distinctly different legal consequences. Now that the bank admits that the figures recorded in the document it prepared was incorrect, it must bear the consequences of those figures. It cannot say: "we didn't mean it like that".

Fourthly, the last statement is a clear lie. Both the client and the bank were well aware that the bank only paid R760 000, and not R990 000 as alleged in the letter. This is a clear fabrication and forgery. Would you ever want to deal with a bank that engages in open fabrication of figures? One wonders if the Reserve Bank or the Registrar of Banks is aware of these clear forgeries.

Fifthly, to further insult our intelligence and expect us to be so naïve, the bank suggests that as long as the total figure is the same it makes no difference. Will anyone agree that 2+10 is the same as saying 6+6 since the total is the same? What utter drivel. Under the first set of figures the bank paid R760 000, and under the second set the bank paid R990 000. Does the bank want to suggest the two figures are the same? It is irrelevant that after some mental gymnastics the final amount charged to the cc ends up to be R1 434 000.

Sixthly, to give some support to its garbled interpretation, the bank made reference to two documents:

a) The Application made under the name "K & D Investments CC"
b) The Application for Assistance to Purchase Property", dated 9 November 1994 and signed on 16 November 1994.

At the time we had neither of the two, and had to rely on information provided by the bank as to what was contained in the documents. Being unsatisfied on third-hand information, we requested the two documents on the 7 February 2006. In its reply of 27 March 2006, the bank stated:

QUEENSEND HOUSE C.C.

Your letter dated 7 February 2006, refers.

The information requested had been furnished to you in previous correspondence, save for the copies of documents, which are currently being retrieved from the archives.

It would be appreciated that with legal action having been instituted against Queensend House C.C. due to a breach of payment of its facility, your request for such detailed information is respectfully declined at this stage. Summary judgment proceedings were dispensed with on the 8 February 2006, with the Court directing that the matter proceed to trial.

As, the matter is sub-judicae, we do not wish to compromise the Bank's position in the pending trial, with the risk of any discussions being misconstrued by the member of Queensend House C.C.

If the request was made on 7 February, we found it extremely strange that by the 27 March the said documents were still being retrieved from the archives.

Further to that, why would the bank be engaged in retrieving the documents when, according to it, the documents could not be shared.

Why was it that the bank was able to quote from and rely on the said documents in order to provide its puny bunkum interpretation, but at the same time was not prepared to share the documents? Was the sub-judice excuse an easy scapegoat? Only the documents would tell.

Fortunately in this case the client did not have to rely on a miracle. He had copies of the documents and un-hesitantly shared them with us. This gave us the answer to the question: Why was the bank trying to hide the documents?

The Application made under the name "K & D Investments CC" clearly recorded the purchase price as R930 000 and not R990 000 as indicated by the bank. Where did the other R60 000 come from? The answer to this question can be found in the letter dated 3 November 1994, wherein it was recorded:

Cost of purchasing property	700 000-00
Loan for improvements	60 000-00
	760 000-00
ABL profit	674 000-00
	1434 000-00

In other words it comes to light that Al Baraka made a "profit" on a loan of R60 000. Profit on a loan is just another name for Riba.

Whichever way you look at it, Al Baraka has to resort to some manipulation of figures in order to make it fit with the Murabaha principles. Its shoddy paperwork leaves much to be desired. One is left with the question of how the Reserve Bank will take to the bank's cover-up stories of "it aught to read like this".

Baatil always has to rely on lies in order to conceal its true nature.

The Bagus Case

This is another case that highlights the absurdity of the cover-stories attached to the loan agreements.

The agreement is replete with clauses and factors that are un-Islamic. Once again, brevity demands that a detail discussion of these factors be deferred to some other opportune moment.

Mrs. Bagus entered into an arrangement with Al Baraka in which the bank was supposed to have purchased "the Goods" from the "Supplier" who was a trading company called "Omar and Mahomed". The bank was then to sell "the Goods" to Mrs. Bagus with a mark-up. It was agreed that Al Baraka would purchase "the Goods" for R660 000.00 from Omar and Mahomed, and sell it to Mrs. Bagus for R1 530 600.00, which included a profit of R870 600.00.

As a side issue, interestingly the mark-up, even when considering the ten year repayment period, would be in access of the interest allowed by the Usury Act. The Loan was amortised at a rate of 20% per annum, which is clearly in contravention of the Act. The amortised figure of interest at the rate of 20% is R870 584.92. Al Baraka's stated profit is R870 600.00. The striking resemblance cannot be overlooked. Nevertheless, the legal fraud is not where our concerns lie.

In this arrangement there were supposed to be three parties:

Supplier	Omar and Mahomed
Seller	Al Baraka Bank
Purchaser	Mrs. Bagus

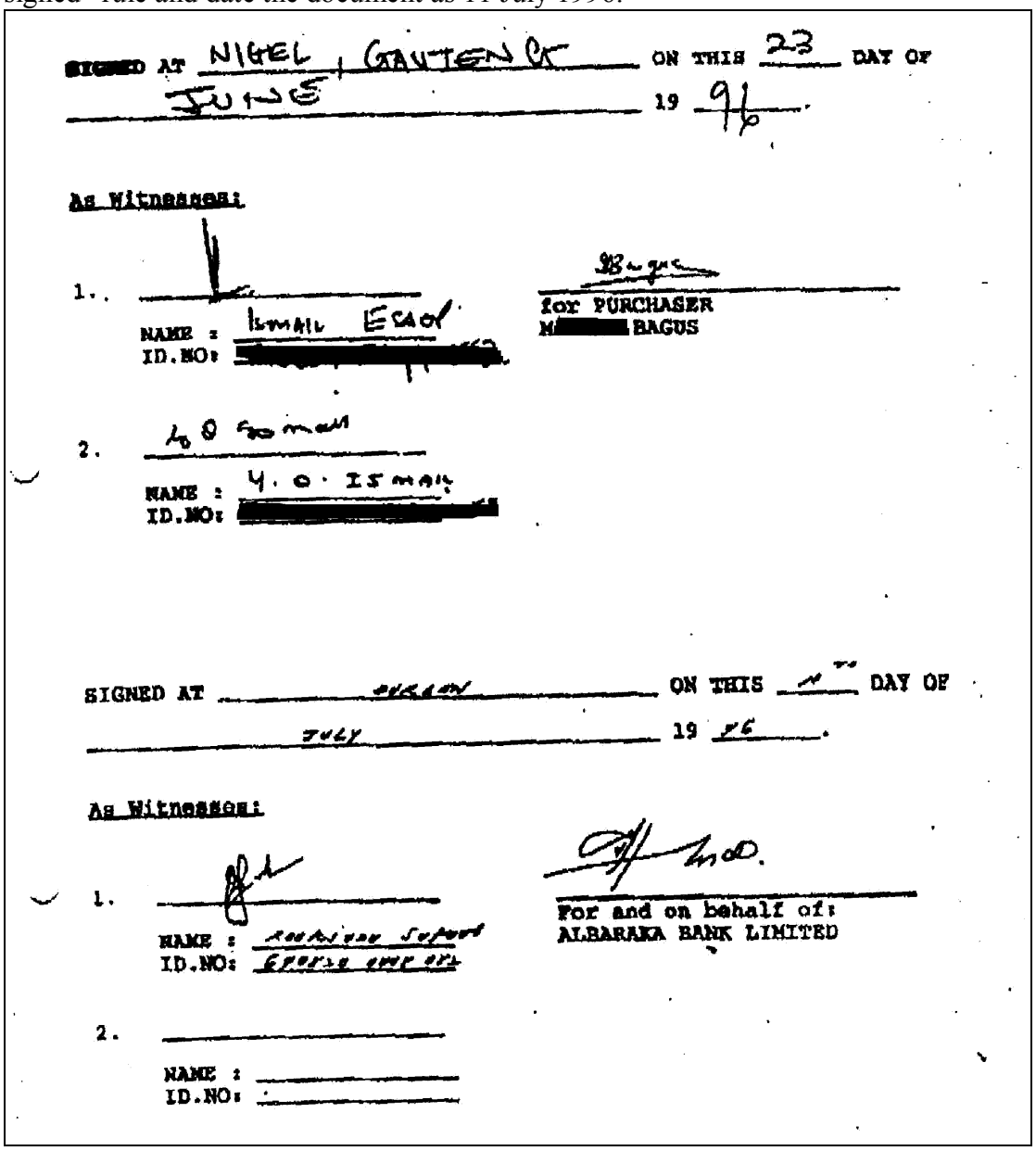
The first purchase and sale was supposed to be between Supplier (Omar and Mahomed) and Seller (Al Baraka Bank).

The second purchase and sale was supposed to be between Seller (Al Baraka Bank) and Purchaser (Mrs. Bagus), with a fictitious profit.

The agreement records:

> 2. SALE AND DESCRIPTION OF THE GOODS
>
> The Seller hereby sells to the Purchaser, who hereby purchases from the Seller, the Goods described below subject to the terms and conditions of this Agreement.

This was dated 23 June 1996, as recorded in the document. At most we make apply the "last signed" rule and date the document as 11 July 1996.



SIGNED AT NIGEL, GAUTENG ON THIS 23 DAY OF JUNE 19 96.

As Witnesses:

1. NAME : ISMAIL ESACK
ID.NO: [redacted]

for PURCHASER
M[redacted] BAGUS

2. NAME : A. O. ISMAIL
ID.NO: [redacted]

SIGNED AT [illegible] ON THIS 11TH DAY OF JULY 19 96.

As Witnesses:

1. NAME : [illegible]
ID.NO: [illegible]

For and on behalf of:
ALBARAKA BANK LIMITED

2. NAME :
ID.NO:

In its letter of 22 March 2007, the bank tried to explain the transaction as follows:

4. The progression of the deal was as follows :

- application for finance made by Mrs Bagus;
- confirmation by Mrs Bagus in selecting the goods which was supported by an inventory ;
- instruction by client to settle the purchase price of R660,000 and this payment was made directly to the supplier "Omar and Mahomed";
- upon payment by the bank, ownership vested in the bank. The bank concluded the sale of the goods to Mrs Bagus at an agreed purchase price and at a pre agreed profit on the cost price;
- the client being Mrs Bagus accepted the bank as the seller for the purchase of the underlying goods as agreed in the Murabaha Instalment Sale Agreement ;

According to the letter, upon payment the bank became the owner of the Goods. Accordingly, this lead to the question: When did the bank pay for the goods? This question was posed to the bank, and their response was:

ALBARAKA BANK
AN AUTHORISED FINANCIAL SERVICES PROVIDER
Banking only one way, the Islamic way

23 April 2007

MRS M[redacted] BAGUS
TEL : [redacted]
FAX: [redacted]

Respected Mrs Bagus

RE : REQUEST FOR INFORMATION

I refer to your faxed letter dated 21 April 2007.

As requested by yourself, please find

1.Copy of original application form made i.n.o. Mrs M[redacted] Bagus

The payment made to Omar and Mahomed in the amount of R660, 000-00 was on the **20 August 1996.**

Should you have any further queries, please feel free to contact me on Tel: 031 – 366 2846.

With Regards

THYS McLEAN
DEPUTY C.E.O.

Hence on 20 August 1996 the bank paid the Supplier and become owner of the Goods. But the problem is that they already sold the Goods to the Purchaser on 11 July 1996. In other words the

second sale was undertaken before the first. In short, they put the Cart before the Horse. In Shari'ah, one may not sell what one does not own.

These are the laughable, ludicrous, preposterous, idiotic, farcical, ridiculous and absurd cover stories Al Baraka uses to hide its true activities of granting loans on interest. Please, let the facts speak for themselves.

Our Call

Our cry is simple: Do not call your activities "Islamic". Remove the name of Islam from all your advertising. Do not use Islam to advance your business interest. Do not prostitute the Shari'ah for your worldly advancement. Call it whatever you want, but don't call it "Islamic".

As long Al Baraka uses the name of Islam to peddle its Riba, we will use the last drop of blood in our body to oppose the nefarious schemes of Al Baraka. Should Al Baraka drop the "Shari'ah" and "Islamic" appellations, we would leave the matter as one between the clients and the bank. Whatever internal understanding they want to have will be their private matter. However, if the bank still insists on advertising itself in the public as being "Shari'ah Compliant" and "Islamic", then we assure the public we will never leave the matter to rest. A lot more will follow, with the Help of Allah Ta'ala.

Who is to blame?

The fault lies not so much with Al Baraka, for they are understandably motivated by worldly gain. The blame lies largely on the gullible and naïve Muslim public. Al Baraka will simply carry on with its activities pretending all is well. As long as they can feign this facade, the innocent fleeceable Muslim public is bound to believe their empty slogans. The Muslim community needs to stand up to these nefarious schemes undertaken in the name of Islam.

And our duty is but to convey. Guidance is only from Allah Ta'ala.

و آخر دعوانا ان الحمد لله رب العالمين

Prepared by
E. Vawda

15 Thul Qa'dah 1429
13 November 2008

Checked and approved:
Mufti Ebrahim Desai Saheb.